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| Institution: | Inter-American Court of Human Rights |
| Title/Style of Cause: | Pueblo Bello Massacre v. Colombia |
| Doc. Type: | Judgement (Interpretation of the Judgment of Merits, Reparations, and Costs) |
| Decided by: | President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Antonio A. Cancado Trindade; Cecilia Medina Quiroga; Manuel E. Ventura Robles; Diego Garcia-Sayan; Juan Carlos Esguerra Portocarrero |
| Dated: | Judge Oliver Jackman informed the Court that, for reasons of force majeure, he would be unable to attend the LXXIII Regular Session, for which reason he did not participate in the deliberation and signing of the instant Judgment. 25 November 2006 |
| Citation: | Pueblo Bello Massacre v. Colombia, Judgement (IACtHR, 25 Nov. 2006) |
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In the case of the Pueblo Bello Massacre vs. Colombia,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 59 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure”), rules on the requests for interpretation of the Judgment on the merits, reparations, and costs issued by the Court on January 31, 2006 in the case of the Pueblo Bello Massacre (hereinafter “the requests for interpretation”), submitted by the State of Colombia (hereinafter “the State” or “Colombia”) and by the representatives of the next of kin of the victims (hereinafter “the representatives”) on May 24, 2006, respectively.

I. FILING OF THE REQUESTS FOR INTERPRETATION

1. On May 24, 2006 both the State and the representatives, respectively, filed requests for interpretation of the Judgment on the merits, reparations, and costs in this case (hereinafter “the Judgment”), under the terms set forth in Articles 67 of the Convention and 59 of the Rules of Procedure.

a) Request for interpretation submitted by the State

2. In its request the State asked the Court to interpret the scope of the form of reparation ordered by the Inter-American Court in paragraphs 275 and 276 of the Judgment, “to implement, as it has done in other cases, a program to provide adequate housing to the next of kin who return to Pueblo Bello”. It also requested clarification of paragraph 240 subparagraph a) of said

Judgment regarding distribution of compensation among the wives or common-law spouses of the missing persons and those who lost their lives.

b) Request for interpretation submitted by the representatives

3. In their request for interpretation the representatives raised several doubts regarding establishment of the beneficiaries of the compensations ordered in the Judgment, in accordance with the criteria set forth by the Court in paragraphs 233 to 241 of said Judgment. Specifically, the representatives deemed that said criteria were not taken into account regarding to certain persons who were not included by the Court in Appendix II of the Judgment as next of kin of the victims, despite the fact that they allegedly proved “in a timely manner and with suitable documents [...] their kinship [...] and fulfillment of the requirements of the Court to be considered beneficiaries of the compensations.” Thus, they asked that the ruling on interpretation state that the persons listed in the request brief are beneficiaries of the compensations under the same conditions as those listed in the Judgment, and they also asked that the names of two next of kin included in said Appendix be corrected.

II. COMPETENCE AND COMPOSITION OF THE COURT

4. Article 67 of the Convention establishes that

[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

5. Pursuant to said Article, the Court is competent to interpret its rulings. In its examination of the request for interpretation, the Court will insofar as possible have the same composition it had when it issued the respective Judgment (Article 59(3) of the Rules of Procedure). On this occasion, the Court is composed of the same Judges [FN1] who issued the Judgment on the merits, reparations, and costs, which it has been asked to interpret.

[FN1] With the exception of Judge Oliver Jackman, who for reasons of force majeure did not participate, as mentioned before.

III. PROCEDURE BEFORE THE COURT

6. The Judgment on the merits, reparations, and costs was issued on January 31, 2006 and notified to the State, to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) and to the representatives on February 27, 2006.

7. On June 13 and 14, 2006, pursuant to the provisions of Article 59(2) of the Rules of Procedure and under instructions by the President of the Court (hereinafter “the President”), the

Secretariat of the Court (hereinafter “the Secretariat”) sent a copy of the requests for interpretation to the Inter-American Commission, to the representatives and to the State, respectively, and informed them that they had a non-postponable deadline up to August 14, 2006 to submit such written observations as they deemed pertinent. It also reminded the State that, pursuant to the provisions of Article 59(4) of the Rules of Procedure, “[t]he request for interpretation does not suspend effect of the Judgment.”

8. On August 14, 2006 the Inter-American Commission submitted its written observations on the requests for interpretation submitted by the State and by the representatives. On that same date the State submitted its written pleadings regarding the request for interpretation filed by the representatives, and the representatives submitted their written pleadings regarding to the request for interpretation filed by the State.

IV. ADMISSIBILITY

9. The Court must establish whether the terms of the requests for interpretation fulfill the requirements set forth in the applicable provisions, that is, Article 67 of the Convention and 29(3) and 59 of the Rules of Procedure.

10. Article 59 of the Rules of Procedure provides that:

1. The request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

2. The Secretary shall transmit the request for interpretation to the parties to the case and shall invite them to submit any written comments they deem relevant, within the time limit established by the President.

3. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment of which the interpretation is being sought. However, in the event of death, resignation, impediment, excuse or disqualification, the judge in question shall be replaced pursuant to Article 16 of these Rules.

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

11. Article 29(3) of the Rules of Procedure establishes that “Judgments and orders of the Court may not be contested in any way.”

12. The Court has corroborated that both the State and the representatives, respectively, filed the requests for interpretation of the judgment within the time limit set forth in Article 67 of the Convention, as the parties were notified of the Judgment on February 27, 2006 (*supra* paras. 4 and 6).

13. On the other hand, as this Court has previously established, [FN2], a request for interpretation of a judgment cannot be used as a means to challenge it, but rather must have as its

only purpose to clarify the meaning of a ruling when one of the parties argues that the text of its operative paragraphs or of one of its considerations lacks clarity or precision, insofar as these considerations have an impact on said operative part. Therefore, it is not possible to request modification or annulment of the respective Judgment by means of a request for interpretation.

[FN2] See Case of the Moiwana Community. Request for Interpretation of the Judgment on the Merits, Reparations, and Costs (Art. 67 American Convention on Human Rights). Judgment of February 8, 2005. Series C No. 145, para. 14; Case of Raxcacó Reyes. Request for Interpretation of the Judgment on the Merits, Reparations, and Costs. (Art. 67 American Convention on Human Rights). Judgment of February 6, 2006. Series C No. 143, para. 15, and Case of the Indigenous Community Yakye Axa . Request for Interpretation of the Judgment on the Merits, Reparations, and Costs. (Art. 67 American Convention on Human Rights). Judgment of February 6, 2006. Series C No. 142, para. 15.

14. The Court has also established that the request for interpretation of judgment cannot consist of submitting factual and legal matters that were already raised at the appropriate procedural moment and on which the Court already reached a decision. [FN3]

[FN3] See Case of the Moiwana Community. Request for Interpretation of the Judgment on the Merits, Reparations, and Costs, supra nota 2, para. 15; Case of Raxcacó Reyes. Request for Interpretation of the Judgment on the Merits, Reparations, and Costs, supra nota 2, para. 16, and Case of the Indigenous Community Yakye Axa . Request for Interpretation of the Judgment on the Merits, Reparations, and Costs, supra nota 2, para. 16.

15. To analyze whether the requests for interpretation submitted respectively by the State and by the representatives are in order, and if appropriate to clarify the meaning and scope of the January 31, 2006 Judgment, the Court will now separately address the main points raised in them, that is, the establishment of the persons considered beneficiaries of the compensation ordered in the Judgment, the criteria for distribution of the compensation, and the housing program as a form of reparation.

V. ESTABLISHMENT OF THE PERSONS CONSIDERED BENEFICIARIES OF THE COMPENSATION ORDERED IN THE JUDGMENT

Pleadings of the representatives

16. The representatives alleged that in the criteria and scope of the considerations in paragraphs 233 to 241 of the Judgment, which were the basis for the Court's decision on the beneficiaries of the compensation ordered, the Court did not take into account 62 persons whose kinship with the victims was proven "in a timely manner and with suitable documents, [as well as] the requirements of the Court for them to be beneficiaries of the compensation." In this regard, they appended to the request for interpretation a list with their names. Also, "to

exemplify certain situations found regarding persons whom they consider beneficiaries of the compensation” even though they were not included in the Judgment, they listed eight situations with their respective examples, as follows:

- 1) Certain siblings of the victims are listed, while others are not despite the fact that the pertinent documents were sent in a timely manner to demonstrate their situation. These are the cases, for example, of the siblings of Camilo Antonio Durango Moreno.
- 2) Siblings deceased after the disappearance of the victim are recognized as beneficiaries of the compensation. However, certain siblings in this same situation regarding to the victims were not included. This is the case, for example, of the brother of Camilo Antonio Durango Moreno, Belarmino Durango Moreno. This person committed suicide, according to the mother’s statement before the Court, due to the depression caused by his brother’s disappearance.
- 3) Certain children of the victims were included, while others were not, despite the fact that they were also mentioned and their situation demonstrated before the Court. This is the case, for example, of Yenedeth Petro Pérez, daughter of José Manuel Petro Hernández.
- 4) In the Judgment, the Court recognized the situation of children of the victims who were born after the disappearance of their fathers. However, in other cases, in the same situation, children who were subsequently born were not included. That is the case, for example, of Sandra Patricia Julio, daughter of Miguel Ángel Gutiérrez Arrieta.
- 5) Certain next of kin are included as beneficiaries of one of the victims, and they were not mentioned in connection with another of their siblings. This is the case of the disappearance of two half-brothers regarding to whom the brothers are the same. That is the situation in the case of Ana Diva Arroyo, mentioned as a beneficiary of José del Carmen Álvarez, but not as beneficiary of Cristóbal Arroyo Blanco.
- 6) Several common-law spouses who were shown to be living with the victim, by means of statements rendered out of court, were not included. This is the case, for example, of Elvira Julio, permanent common-law spouse of Miguel Ángel Gutiérrez Arrieta.
- 7) The Court was able to verify that there were various types of kinship relations between the victims and their next of kin. Some victims were the permanent common-law spouses of a woman who was also the sister of one of the missing victims. When it listed the beneficiaries, the Court did not include this person in one of those relationships. This is the case, for example, of Rafaela Pérez, sister of Benito José Pérez Pedroza and wife of José Manuel Petro Hernández. In the Judgment, Rafaela is not mentioned as a beneficiary of her brother despite being in one of the categories defined by the Court.
- 8) Another situation found is that of the omission of one of the children of the victims, who appeared before the Court and testified during the hearing to gather evidence, and whose situation was demonstrated with the documents required, and nevertheless is not among the beneficiaries. This is the case of Ángel Emiro Jiménez, son of Ángel Benito Jiménez Julio.

17. The representatives also asked the Court, when it issues the ruling on interpretation, to declare that the persons listed in the appendix to their request for interpretation are beneficiaries of the compensation under the same conditions as those listed in the Judgment on the merits, reparations, and costs, based on their proven kinship.

18. Finally, the representatives alleged that in Appendix II of the Judgment on the merits, reparations, and costs there were “some mistakes regarding the names of certain beneficiaries

that might cause difficulty in their claims before the Colombian authorities,” for which reason they asked the Court to clarify:

- a) the name of Elida Fuentes Marimón, sister of Wilson Uberto Fuentes Marimón, who allegedly appears in said appendix under the name Eliy Calixto Fuentes Marimón, as his sister, and
- b) the name of Carmen Alfonso Melo, sister of Carlos Antonio Melo Uribe and Mario Melo Palacio, who allegedly appears in said appendix as Alfonso Melo Palacio, as their brother.

Pleadings of the State

19. Regarding to the pleadings of the representatives regarding the individuals who were supposedly not included as beneficiaries in the Judgment, the State asked the Court to find the representatives’ brief out of order, “as it is actually an appeal of the ruling issued” by the Court. In this regard, they stated, inter alia, that:

- a) the representatives seek, under the form of a request for interpretation, to expand the content and scope of the ruling, “when there is no doubt regarding the meaning and scope” of the Judgment issued by the Court;
- b) there is no supervening situation or substantive error that merits modifying the Judgment;
- c) the Court directly established the criteria regarding who should be considered the “injured party” in paragraphs 234 and 235 of the Judgment;
- d) according to the Rules of Procedure of the Court and pursuant to its jurisprudence, both the Commission and the representatives had the procedural opportunity in the application and in the brief with requests and motions, respectively, to individually identify the next of kin and to provide all the evidence regarding their kinship with the victims. Nevertheless, given that the matter involved the next of kin of victims, in a manner consistent with its practice and to safeguard equality among the parties, the Court asked the representatives for the evidence that it deemed was lacking to establish who were next of kin or victims;
- e) the representatives had their procedural opportunity to refer to the issue of the beneficiaries and nevertheless they did not. Therefore they cannot, by means of a request for interpretation, which is exceptional in nature, once again argue regarding facts or rights that they should have proven at the appropriate procedural times;
- f) the representatives did not duly prove the kinship ties between the relative and the respective direct victim, for which reason several relatives were excluded from Appendix II of the Judgment. In this regard, the State did not deem that there was any error; instead, having examined the documents provided and assessed it according to the rules of competent analysis, the Court did not find sufficient evidence to include these individuals as injured parties;
- g) the Court, safeguarding the rights of the victims and finding that some of the documents supplied were not suitable to prove the kinship tie, and to avoid their being left unprotected, established a mechanism to solve this situation, which was to give the possible next of kin of victims the opportunity of going before the competent Colombian authorities to claim the compensation, insofar as they duly demonstrate said kinship, according to the provisions of paragraph 237 of the Judgment, and
- h) therefore, the ruling was undoubtedly precise regarding establishment of the injured party, fully identified in said Judgment, and regarding the solution provided in case there were

next of kin not included in that Judgment, allowing them to prove their right to compensation under the domestic legal order.

Pleadings of the Commission

20. Regarding to the pleadings of the representatives regarding the individuals who were not included as beneficiaries in the Judgment, the Commission deemed that, insofar as said persons were not included under the situation foreseen by the Court regarding “next of kin for whom official documents were not supplied or the documents supplied do not prove the kinship” (paragraph 237 of the Judgment), when there is evidence in the file that said persons were injured as a consequence of the facts; of their kinship with the victims, and/or that they are heirs of the victims, “it would be useful to explicitly state that they are beneficiaries of the reparations.”

Considerations of the Court

21. In the aforementioned Judgment (*supra* para. 6), specifically in the section on “beneficiaries” of the reparations, the Inter-American Court deemed that:

235. [...] In accordance with its jurisprudence[...], this Court deems duly identified the next of kin of the missing persons and those deprived of their lives, the mothers, fathers, sisters, brothers, wives, common-law spouses, daughters and sons, referred to in a document issued by a competent authority demonstrating their kinship, such as a birth certificate or a baptism certificate, submitted to this Court.

236. The next of kin of the victims will be entitled to the reparations ordered by the Court for non-pecuniary and/or pecuniary damages, as victims themselves of the violations found to the Convention, as well as those established by the Court as successors to the 37 missing victims or the six victims deprived of their lives.

237. Regarding to the next of kin of those who have not supplied official documentation or whose documents do not prove kinship, this Court orders that their compensation for non-pecuniary damages will follow the parameters set for the victims’ next of kin that were identified (*supra* para. 236 and *infra* para. 240), insofar as they appear before the competent authorities of the State, within twenty-four months of the date of notification of this Judgment, and supply the official information required to identify them and establish their kinship.

[...]

22. The Court notes that the matter raised by the representatives is limited to questioning the reasons why certain persons, presumably next of kin of the missing victims and those deprived of their lives, are not include in Appendix II of the Judgment as beneficiaries of compensations. It must be noted that, in their request for interpretation, the representatives make statements regarding the general conditions and only give certain “examples” of a list with 62 names of persons who would be under one of those conditions. Even if this Court limited itself to the specific cases mentioned by the representatives, this might lead the Court to review whether the documents submitted to the Court allow the existence and kinship of those persons to be proven according to the criteria set forth in the aforementioned paragraphs. In other words, their request for interpretation is not such a request at all, insofar as it does not address specific and concrete

matters regarding the scope and meaning of the provisions of the Judgment, which require an interpretation by the Court, under the terms set forth in Articles 67 of the Convention and 29(3) and 59 of the Rules of Procedure (supra paras. 4, 5 and 9 to 11), but rather it seeks to examine factual matters that were already analyzed and decided in the Judgment. Therefore, the Court finds the request for interpretation filed by the representatives to be out of order, because it is not in accordance with the terms set forth in said provisions.

23. Notwithstanding the above, the Court deems it appropriate to recall that in the instant case there were numerous difficulties regarding identification of the next of kin of the 43 victims deprived of their lives or missing. The lists of alleged victims and next of kin supplied by the Commission and the representatives, respectively in the application and in the written brief containing pleadings, motions, and evidence (hereinafter “written brief containing pleadings and motions”), were different and, in some cases, the documents supplied were unreadable, incomplete, or otherwise insufficient to prove the existence or kinship of certain persons with the missing victims or those deprived of their lives. In face of said situation, the Court conducted a painstaking examination of the evidence submitted by the Commission and the representatives, to gather all the items required to precisely identify the alleged victims and their next of kin, and it also asked the representatives to submit additional documents as evidence to facilitate adjudication. After finding the violation of Articles 5(1), 8 and 25 of the American Convention, in combination with Article 1(1) of that same Convention, to the detriment of “the next of kin individually identified in this proceeding” (paragraph 162), the Court ordered reparations, considering the “injured party” to be those next of kin of the 43 victims who had been adequately identified. To establish the next of kin, that is the mothers, fathers, sisters, brothers, wives, common-law spouses, daughters and sons, the Court took into account the documents “issued by competent authorities” that demonstrated their kinship with the former, such as birth certificates or baptism certificates, based on what was effectively supplied by the parties during the proceeding (paragraph 235 of the Judgment).

24. Thus, the Court established, based on the aforementioned criteria and on the suitable documents supplied by the parties, those relationships of kinship with the victims that were adequately identified in the proceeding before the Court, whose names and kinship were set forth in Appendix II of the Judgment, and it ordered the respective reparations. However, given the possible existence of other next of kin of the victims who were not adequately identified in this international proceeding, in the terms set forth in the Judgment, the Court adopted the provisions embodied in paragraphs 237 and 250, to safeguard their right to claim reparations for pecuniary or non-pecuniary damage suffered.

25. Therefore, regarding compensation for material damages, the Court “refrain[ed] from ordering compensation in favor of the next of kin of the 37 missing persons and the six persons deprived of their lives, in this proceeding, regarding to other pecuniary losses they may have suffered. However, the Court “ma[de] it clear that establishment of reparations in this international venue neither obstructs nor precludes the possibility of the next of kin making the pertinent claims before the national authorities” (paragraph 250 of the Judgment).

26. In a similar vein, regarding to non-pecuniary damages, paragraph 237 of the Judgment ordered that the next of kin “for whom official documents were not supplied or the documents

supplied d[id] not prove the kinship,” they could receive “the compensation they are entitled to for non-pecuniary damages,” according to “the parameters for the victims’ next of kin who were identified [...] insofar as they appear before the competent authorities of the State within twenty-four months of when this Judgment is issued and supply the official information required to identify them and prove their kinship.”

27. In other words, it is clear that the listing of those 43 victims in said Appendix II of the Judgment was not restrictive and it did not preclude the right of any other next of kin of requesting the respective compensation for pecuniary or non-pecuniary damages before the competent national authorities, insofar as they do so under the conditions set forth. This, of course, applies to the persons mentioned by the representatives in their request for interpretation, as well as to any other persons who prove their right under said conditions.

28. The other aspects raised by the representatives can be addressed during the stage of oversight of compliance with the Judgment, when appropriate.

VI. CRITERIA FOR DISTRIBUTION OF THE COMPENSATIONS

Pleadings of the State

29. Regarding to distribution of the compensations ordered in the Judgment, the State asked the Court to clarify paragraph 240 subparagraph a) of that Judgment regarding distribution of the compensations among the next of kin of the persons missing or deprived of their lives. In this regard, it asked the following specific questions:

- 1) If there is a wife or husband and a permanent common-law spouse [of] one of the victims (other than those specifically identified at the end of said subparagraph), which of those two persons is the beneficiary of the compensation? [,and]
- 2) To be a beneficiary of the compensations, is it necessary to prove that the person lived with the victim at the time of death? This question is raised because under the domestic legal system it is necessary to prove that they lived together. The above taking into account the provisions of Article 68 of the [Convention].

Pleadings of the representatives

30. Regarding to the clarification requested by the State regarding distribution of the compensations ordered in the Judgment, the representatives deemed that:

- a) if there is another victim simultaneously with a wife and a permanent common-law spouse, it is necessary to apply the same criterion set forth by the Court regarding to the persons mentioned in subparagraph a) of paragraph 240 of the Judgment. Therefore, both persons must be recognized and the respective compensation for this category of beneficiaries must be split in equal parts, and
- b) on the other hand, the fact that the victim and his wife and/or permanent common-law spouse lived together is a circumstance that was assessed by the Court when it recognized the beneficiaries of the reparation measures. In this regard, “it would not be in accordance with the

duty to make prompt and timely reparations to place the beneficiaries under the obligation of demonstrating before the State situations and conditions that were already demonstrated before a judicial body recognized by the State itself, such as the Court, unless one of the beneficiaries of the compensations with a legitimate interest challenges whether they lived together at the time of the facts, in which case the State should require proof of said fact, by means of a [...] contested and public procedure.”

Pleadings of the Commission

31. Regarding to the pleadings of the State regarding distribution of the compensations when there is a wife and a common-law spouse of the same victim, the Commission deemed that said pleading “does not raise a doubt regarding the scope of the Judgment, in whose paragraph 240(a) the Court clearly established that the person entitled to the compensation ordered would be the wife or permanent common-law spouse of the victim, at the time of deprivation of life or disappearance of the victim.” Regarding to the second question by the State regarding this point, the Commission deemed that “additional evidence cannot be required under domestic venue of persons who have already been explicitly declared by the Court [to be] victims or beneficiaries of the reparations ordered in the adjudicatory proceeding [in] which they have proven their right.” Therefore, “the request for interpretation in this section [...] is unnecessary and out of order.”

Considerations of the Court

32. The Court notes that the questions of the State refer to a hypothetical situation in which wives and common-law spouses of one or several of the 43 persons deprived of their lives or missing, not included in subparagraph a) of paragraph 240 of the Judgment, claim reparation for pecuniary and non-pecuniary damages regarding the persons deprived of their lives or missing. Said questions also refer to whether in said hypothetical situation it is necessary to prove that they lived with the victim at the time of his death or disappearance, for them to be beneficiaries of the compensations, which according to the State is required under the Colombian domestic legal system.

33. Regarding to the first question by the State, in case other wives and common-law spouses not included in the Judgment file claims before the national authorities for pecuniary or non-pecuniary damages regarding to those 43 victims, both would be beneficiaries when they prove said condition. In this situation, 50% of the respective compensation must be distributed in equal parts between both persons, in the same manner set forth in subparagraph a) of paragraph 240 of the aforementioned Judgment.

34. Regarding to the second query by the State, the Court notes that establishment of the beneficiaries of the reparations, as part of the obligation to make reparations, was already decided in the Judgment, based on the criteria set forth therein and the evidence offered in the proceeding, in light of the provisions of the American Convention and its underlying principles. In other words, said decision cannot be modified by the State invoking its domestic legal provisions. In view of this, the Court agrees with the reasoning of the representatives and of the Commission, that it is not possible to require additional evidence, under domestic venue, to

established that persons whom the Court explicitly found to be victims or beneficiaries of reparations are in fact victims or beneficiaries, as this would reopen factual and legal matters that were already decided in the Judgment. On the other hand, in the hypothetical situation of the previous paragraph (supra para. 33), the person who was the wife or common-law spouse of the victim at the time of his death or disappearance must prove that fact according to the applicable domestic legal provisions.

35. Pursuant to the above, the Court has established the meaning and scope of the provisions of paragraph 240 subparagraph a) of the Judgment.

VII. HOUSING PROGRAM

Pleadings of the State

36. The State requested an interpretation regarding the scope of the form of reparation set forth in paragraphs 275 and 276 of the Judgment. Deeming that “the proven fact on which the reparation is based is extremely general [to know] for certain whether or not the parameters expected by the Court are being fulfilled,” the State asked the following specific questions:

1. The Judgment lists in Appendix I [sic] the group of beneficiaries regarding to each victim. Can the State infer that each family group would receive one house?
2. What is the deadline for these persons to make their claim before the State?
3. What evidence must be supplied to be a beneficiary of this measure of reparation?
4. What is the deadline for the State to comply with the obligation, once the right to benefit from the housing program has been proven?
5. Under the domestic legal order, an individual cannot benefit twice from government housing programs. If one of the beneficiaries (in accordance with the reply to question number 1) has benefited from a government housing program, can it be understood that the obligation established in the Judgment has been fulfilled?

Pleadings of the Commission

37. Regarding to the request by the State regarding implementation of the housing program, the Inter-American Commission stated, inter alia, that:

- a) the effet utile of said measure of satisfaction is related to the reparation for losses and to creating the conditions required to return to Pueblo Bello. The Commission deemed that any implementation of the program designed must bear in mind the objectives stated by the Court;
- b) regarding to the deadline, as the Court stated in paragraph 287, the Commission deemed that the State must comply with said obligation within a “reasonable term.” “The above does not mean that this obligation will not be subject to constant scrutiny by the Court, during the period in which it is pending.” In this regard, the Commission deemed that “there should be an initial assessment of compliance with these obligations when the State submits its [first] report on compliance, one year after notification of the Judgment”;
- c) regarding to the evidence that must be supplied to be a beneficiary of this reparation measure, the Commission deemed that “the text of the Judgment is clear and it constitutes a

suitable instrument for direct implementation of the obligations established by the Court. In this regard, save for the processes of demonstrating identity, the Commission deemed “that it would not be pertinent, for example, to demand additional evidence under domestic venue from those who have been explicitly found by the Inter-American Court to be victims or beneficiaries of the reparations ordered,” and

d) regarding to whether the obligation set forth in the Judgment has been fulfilled when one of the beneficiaries has been granted housing by a government program, the Commission stated that this “is not a matter for interpretation of the Judgment,” as it is not in accordance with a need for “precision of a text, [...] regarding what was decided in one of its operative paragraphs [or] regarding establishment of the scope, the meaning, or the purpose of its considerations.” If the Court were to address this matter, “it would have to offer an abstract opinion that might affect the process of compliance in this case or in others, without having taken into account all the necessary facts.” It also pointed out that “the exercise of answering generic or abstract queries is more appropriate for the advisory role than the adjudicatory jurisprudence.” Therefore, for the Court to address this type of situations “it is indispensable that the query be placed in the context of concrete situations, in which both the State and the person possibly affected may submit their viewpoints to the Court.” Therefore, the Commission deemed “that this type of query should be addressed as part of the process of compliance with the judgment.”

Pleadings of the representatives

38. Regarding to the aforementioned request made by the State, the representatives stated, in connection with this matter, that:

a) establishment of the scope of the measure of reparation ordered by the Court and its meaning as such for the next of kin of the victims makes it necessary to consider the circumstances, the gravity, and the nature of the facts heard by the Court;

b) the scope of the measure of reparation mentioned by the State must be interpreted on the basis of the jurisprudence invoked by the Court itself to provide support for its decision, specifically the provisions of the case of the “Plan de Sánchez” Massacre vs. Guatemala;

c) the housing program must respect the current family groups, that is, each next of kin who was displaced has the right to a house. The next of kin who live together (for example, the parents of the victim) will receive a single house, while the others (brothers or sons who have left the home and established their own families) will receive their own houses. In this regard, the representatives stated that “[i]t is not realistic to expect that all the members of a family group, plus their spouses and children (which in some families amounts to 50 or more individuals) could live in a single house, bearing in mind the obligation to ‘provide adequate space’.” Furthermore, many of the next of kin of the victims, at the time of the facts, did not necessarily live in the same house as the victims, because they had different though nearby dwellings. In other words, it must be understood that “the measure of reparation ordered by the Court must apply to each family group of each of the next of kin of the victims identified in the Judgment and those proven as such under domestic venue as foreseen in paragraph 237 of the Judgment”;

d) regarding deadlines, the Court did not establish any fixed one because, as it underlined in paragraphs 275 and 276, certain conditions set forth in this Judgment are required to establish when the victims can appear before the State to demand their fulfillment. The deadline for the

State to comply with this obligation is subject to the State completing the investigation, elucidating the facts, and punishing those responsible for the facts;

e) the above also relates to the duty of the State to provide the security conditions required so that those next of kin who decide to return are able to do so. In this situation, the next of kin and their representatives must be informed of the concrete activities regarding verification and consultation that must be conducted by official representatives of the State, who must be civil officials. The purpose of this is for them to have sufficient information so that, after reaching a conclusion and preparing an evaluation, jointly conducted by those official representatives and the community regarding verification of said security conditions, the next of kin of the victims who are beneficiaries of the measures can appear before the State to claim this reparation. Said information must also be forwarded to the Court for it to periodically assess progress regarding those aspects and when there are appropriate conditions to fulfill said reparation. Once the next of kin who are beneficiaries have submitted the request, the State must comply with the housing plan within a year. Notwithstanding the above, the State must take such land use planning and other planning measures as may be required so that, when one or several next of kin decide to return to Pueblo Bello, there are the necessary means and conditions to address the requirements of the housing plan, and

f) specifically, regarding to the beneficiaries of said reparation measure, the representatives expressed, inter alia, that:

i. it must be understood that the beneficiaries of the measure of reparation are all those recognized as such by the Court in the Judgment and those that the Court allowed to demonstrate said condition before the Colombian authorities. Since the Court did not set special conditions to be a beneficiary of said reparation measure, it is not possible to interpret that said limitations might go beyond what was established to recognize beneficiaries in the Judgment itself;

ii. even though the State referred to existence of a domestic legal provision that could impede possible compliance with this measure regarding to persons who already benefited from housing plans, it did not provide evidence of the existence of said provision, and it did not specify said provision;

iii. pursuant to Article 27 of the Vienna Convention, the State cannot allege domestic legal provisions to refuse to comply with its obligation to implement and fulfill the reparation measures ordered by the Court, and

iv. if the State has recognized and benefited any of the next of kin in this case with a housing project, said next of kin cannot thereby be excluded from the measure of reparation, as said plan was not designed to redress the damage caused by this specific fact.

Considerations of the Court

39. The Court has deemed it proven that this aspect brought up by the State in its request for interpretation raises valid doubts regarding the scope and mode of compliance with one of the forms of reparation ordered in paragraphs 275 and 276 of the Judgment, consisting of the obligation to “implement [...] an adequate housing plan for the [displaced] next of kin who return to Pueblo Bello.” Therefore, it finds this aspect of the request for interpretation made by the State to be admissible, for which reason the Court will now address it.

40. In the aforementioned Judgment, the Court deemed it proven that:

The next of kin of the alleged victims have suffered pecuniary and non-pecuniary damage as a direct consequence of the facts; this has been detrimental to their physical and psychological health, it has had an impact on their social and work relations, has altered their family dynamics and, in some cases, has placed the life and personal safety of some of their members at risk, who lost their property and were threatened multiple times by the paramilitary. [...] As a consequence of the facts, especially of the harm suffered by the families, the fear of the next of kin that similar facts might happen again and the threats received by some of them, several families from Pueblo Bello were internally displaced. This situation has several manifestations: there are persons or families who were displaced temporarily and have returned to their town; others were forced into an intermittent displacement since the time of the facts or subsequently. Furthermore, some had to leave Colombia. (paragraph 95.161 of the Judgment).

41. As a consequence of these facts and of having found said violation of the right to humane treatment, the Court ordered, specifically in the section on “Other forms of reparation,” that the State take appropriate security measures for the next of kin and former inhabitants of the township of Pueblo Bello who decide to return. Among the measures ordered, the State must implement a housing program, bearing in mind that many of the inhabitants of Pueblo Bello lost their possessions as a consequence of the facts of the case.

42. The Court notes that the questions by the State are geared toward specifically elucidating certain forms of compliance with the specific obligation to implement an appropriate housing program in favor of the next of kin of the victims who wish to return to Pueblo Bello. First of all, it should be noted that paragraph 276 of the Judgment does not address the specific content and characteristics of this housing program. When it thus ordered said form of reparation, the Court took into account the context in which the facts of the instant case took place, which are set within the framework of a widespread situation of forced internal displacement that affects several regions of Colombia and that is caused by the domestic armed conflict.

43. Thus, the displacement of the next of kin due to the situation they have faced in this case may have been aggravated by not having received the conditions required to return to Pueblo Bello, if they wished to do so. The complexity of this phenomenon also determines the possibility of returning and the conditions and forms for said return. In a manner consistent with the above, when it ordered the reparation regarding the aforementioned situation of forced displacement, the Court decided to instruct the State to implement “an adequate housing program,” as the State authorities were in a position to do so in a better informed manner and directly with its beneficiaries. Inasmuch as it is a “program,” the State has leeway to decide on the structure and mode of certain aspects pertaining to the allocation of the necessary resources, planning, execution and supervision of the program, based on the objectives set forth in the Judgment and the protection required to ensure adequate reparation specifically for the next of kin of the victims who decide to return to Pueblo Bello. In this regard, the Court will now address the specific points raised by the State.

44. Regarding to the first question posed by the State, the Court notes that the file did not include sufficient information to establish the way each family group lived before the facts of January 14, 1990, or to assess the material property lost. However, the Court did not limit this

reparation to family groups, but rather ordered that the program be implemented “for those next of kin who return to Pueblo Bello.” It is reasonable to assume that composition of said family groups may have varied since then, and it was also proven that the facts altered the manner of life of the families. Therefore, it is also reasonable to assume that the housing needs of each person or family group must be established based on an assessment of each case, in the framework of the housing program set up.

45. Regarding the second question, regarding to the deadline for the respective claim, the very dynamics of the displacement phenomenon entail that each beneficiary of the program can make his or her claim when they decide to return to Pueblo Bello, as set forth in paragraph 275 of the Judgment. This moment will no doubt vary according to the specific circumstances of each person and based on verification of the security situation in the area, therefore a “reasonable period” was mentioned for this purpose. Bearing in mind the situation of displacement faced by the families in the context of the armed conflict and of the specific characteristics of the instant case, the Court therefore deems it pertinent to specify that the maximum period to make these claims is 5 years from the date of notification of the Judgment on the merits, reparations, and costs (supra para. 6).

46. Regarding to the third question regarding the evidence that must be supplied for the next of kin of the victims to be beneficiaries of the housing program, they should be considered beneficiaries merely by proving that they are next of kin of victims, whether because they were included in Appendix II of the Judgment or by subsequently demonstrating this in the aforementioned terms (supra paras. 24 to 27).

47. Regarding to the fourth question regarding the deadline for the State to comply with said obligation, the Court deems it appropriate to specify that the State must comply with this reparation within 18 months of when the person duly demonstrated that he or she is a beneficiary of the program.

48. Finally, regarding the fifth question, in the case of next of kin who have benefited from a government housing program that sought to repair, or in some way alleviate, the effects of forced displacement, the Court deems that participation in said programs would compensate the effects of the damage caused.

49. Pursuant to the above, the Court has established the meaning and scope of the provisions of paragraphs 275, 276 and 287 of the Judgment.

VIII. OPERATIVE PARAGRAPHS

50. For the aforementioned reasons,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Rules of Procedure

DECIDES:

Unanimously,

1. To dismiss the request for interpretation of the Judgment on the merits, reparations, and costs, made by the representatives, because it is out of order, as set forth in paragraphs 21 to 28 of the instant ruling on interpretation.
2. That the meaning and scope of the provisions of paragraph 240 subparagraph a) of said Judgment, in connection with operative paragraphs sixteen and seventeen of that Judgment, have been established in paragraphs 32 to 35 of the instant ruling on interpretation.
3. That the meaning and scope of the provisions of paragraphs 275, 276 and 287 of said Judgment, in connection with operative paragraph twelve of that Judgment, have been established in paragraphs 39 to 49 of the instant ruling on interpretation.

Sergio García-Ramírez
President

Alirio Abreu-Burelli
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles
Diego García-Sayán

Juan Carlos Esguerra-Portocarrero
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary